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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,364	06/19/2001	Johannes Hendrikus Van Lith	PB0013/US	1078

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EXAMINER

JOHNSON, VICKY A

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 07/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/883,364

Applicant(s)

VAN LITH ET AL.

Examiner

Vicky A. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "third part of the transverse element comprises parts which extend at an angle to a horizontal line" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer

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program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or

REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a).

"Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

4. The disclosure is objected to because of the following informalities: on page 5 lines 21 "under" should be --between--; on pages 6 and 7 lines 25 and 26 and lines 1-5, respectively, reference character 26 is used to designate both "portion" and "surface". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the illustrated first embodiment, does not reasonably provide enablement for the second un-illustrated embodiment. The specification does not enable any person skilled in the art to which it pertains, or with

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which it is most nearly connected, to make the invention commensurate in scope with these claims. The specification does not disclose how the parts (16 and 17) can be on "the third part", but also be part of the structure of projection (14) and recess (15). Are there two separate sets of projections and recesses, one set on the second part and one set on the third part? Is the entire structure of the projection and recess (14,15,16,17) being moved to the third part?

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 2, 3, 5-7, 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, it is unclear as to the definition of "in large part" as it is not defined in the specification.

In claim 3, it is unclear as to the definition of "is mainly" as it is not defined in the specification, further it is unclear as to the scope of the difference between the language of claims 2 and 3.

Claim 5 recites the limitation "the tilting line" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the surface" in line 2. There is insufficient antecedent basis for this limitation in the claim.

In claims 6 line 5 and claim 7 line 5, it is unclear which direction is being claimed by the limitation, "the direction of the driving belt".

In claim 9, it is unclear if the edges are to be "deburred" or "rounded".

Claim 10 is unclear because a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 10 recites the broad recitation "for a continuously variable transmission", and the claim also recites "in particular as defined in any one of the preceding claims", which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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10. Claims 1-4, 6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Takagi (JP-1-247841).

Takagi discloses a driving belt comprising: a carrier consisting of two endless band packages (3) lying side by side (see Fig 2), on which transverse elements (2) are disposed, wherein each transverse element includes two recesses (6) positioned opposite each other for receiving the band packages (see Fig 2), so that a first part (9) of the transverse element extends under the band packages, a second part (11) of the transverse element is positioned between the band packages, and a third part (7) of the transverse element extends above the band packages, wherein the front side of the transverse element includes a projection (12) which can mate with a recess (13) in the adjacent transverse element, characterized in that the projection extends in the horizontal direction (see Fig 3), the rear side of the transverse element includes a recess which likewise extends in the horizontal direction (see Fig 3), and wherein the projection and the recess are at least partially formed in the second part of the transverse element (see Fig 3).

Re claim 2 and 3, the projection and the recess are in large part present in the second part of the transverse element (see Fig 3).

Re claim 4, the projection and the recess extend in the transverse direction over the entire area of the transverse element between the two recesses (see Fig 3).

Re claim 6, as best understood, the surface of the projection and the recess comprises parts which extend at an angle to a horizontal line in the plane in which the

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band packages lie, and which extends perpendicularly to the direction of the driving belt (see Fig 3).

Re claim 10, a transverse element (2) in which each transverse element includes two recesses (6) positioned opposite each other for receiving the band packages (see Fig 2), so that a first part (9) of the transverse element extends under the band packages, a second part (11) of the transverse element is positioned between the band packages, and a third part (7) of the transverse element extends above the band packages, wherein the front side of the transverse element includes a projection (12) which can mate with a recess (13) in the adjacent transverse element, characterized in that the projection (12) extends in the horizontal direction (see Fig 3), the rear side of the transverse element includes a recess (13) which likewise extends in the horizontal direction (see Fig 3), and wherein the projection (12) and the recess (13) are at least partially formed in the second part of the transverse element (see Fig 3).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takagi (JP-1-247841) in view of Masuda et al (US 5,169,369).

Takagi discloses the claimed invention as described above, but does not disclose the projection disposed some distance above a tilting line.



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Masuda et al disclose the projection (111) is disposed some distance above the tilting line (L), which distance is smaller than the smallest vertical dimension of the recess (see Fig 9).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a tilting line as taught by Masuda et al in the driving belt of Takagi so that the transverse elements can pivot relative to each other to conform to the curvature of the pulley (col. 7 lines 25-31).

13. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takagi (JP-1-247841) in view of Maruyama (EP-421804).

Takagi discloses the claimed invention as described above, but does not disclose the transverse element being made from a strip of material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the transverse element from a strip of material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Takagi discloses the claimed invention as described above, but does not disclose that the edges of the transverse element have been deburred and/or rounded.

Maruyama discloses that the edges (10) of the transverse element have been rounded (see Fig 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include round the edge of the transverse element as taught by

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Maruyama in the driving belt of Takagi so that the transverse element comes into firm contact with the pulley walls (col. 3 lines 44-53).

The method of forming a device is not germane to the issue of patentability of the device itself. These limitations, "a cutting operation" and "a tumbling operation", have not been given patentable weight.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,123,879	Lecouturier et al	(rounded band package recess)
4,386,921	Roberts	(rounded band package recess)
6,146,294	Bolz	(projection and recess)
JP-6-94083	Tanaka et al	(projection and recess)
JP-6-94082	Tanaka et al	(projection and recess)
JP-5-209652	Tanaka et al	(projection and recess)
JP-2-118229	Takagi	(projection and recess)
JP-58-24640	Tanaka et al	(projection and recess)
JP-62-106147	Takagi	(rounded band package recess)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (703) 305-3013. The examiner can normally be reached on Monday-Thursday (7:00a-5:00p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Bucci can be reached on (703) 308-3668. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

vaj *AAJ* 7/18/02  
July 18, 2002

*David A. Bucci* 7/18/02  
DAVID A. BUCCI  
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